



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 210623-0137; RTID 0648-XY100]

Endangered and Threatened Wildlife; 90-Day Finding on a Petition to List Harbor Seals in Iliamna Lake as a Threatened or Endangered Species

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; 90-day petition finding.

SUMMARY: We, NMFS, announce a 90-day finding on a petition to list the Pacific harbor seals (*Phoca vitulina richardii*) in Iliamna Lake as threatened or endangered under the Endangered Species Act (ESA) and to designate critical habitat. We find that the petition and information readily available in our files does not present new information or analyses that had not been previously considered in our 2016 distinct population segment (DPS) assessment and petition finding and, therefore, the petition does not present substantial scientific or commercial information indicating that the petitioned action may be warranted.

ADDRESSES: Copies of the petition and related materials are available from the NMFS websites at <https://www.fisheries.noaa.gov/national/endangered-species-conservation/negative-90-day-findings> or upon request from the Assistant Regional Administrator for Protected Resources, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668.

FOR FURTHER INFORMATION CONTACT: Jenna Malek, NMFS Alaska Region, (907) 271-1332, Jenna.Malek@noaa.gov; Jon Kurland, NMFS Alaska Region, (907) 586-7638, Jon.Kurland@noaa.gov; or Adrienne Lohe, NMFS Office of Protected Resources, (301) 427-8442, Adrienne.Lohe@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

On February 6, 2020, we received a petition from the Center for Biological Diversity (CBD) to list the harbor seals in Iliamna Lake, Alaska as a threatened or endangered species under the ESA and to designate critical habitat concurrent with listing. Under the Marine Mammal Protection Act (MMPA), harbor seals in Alaska are divided into 12 separate stocks as described in NMFS's Alaska Marine Mammal Stock Assessments, 2019 (<https://repository.library.noaa.gov/view/noaa/25642>). Harbor seals in Iliamna Lake are within the geographic range of the Bristol Bay harbor seal stock.

CBD previously petitioned NMFS to list the harbor seals in Iliamna Lake as threatened or endangered in 2012. NMFS published a positive 90-day finding in 2013 and commenced a review to determine whether these seals were a "species" and if so whether listing was warranted (78 FR 29098; May 17, 2013). Per the joint NMFS–U.S. Fish and Wildlife Service (USFWS) (jointly, "the Services") policy that clarifies the agencies' interpretation of the phrase "distinct population segment" (61 FR 4722; February 7, 1996), when determining whether a population segment is a DPS, we consider both the discreteness and the significance of the population segment in relation to the remainder of the species to which it belongs. After completing a DPS assessment, NMFS determined in 2016 that the discreteness of the seals was supported by the limited genetic information available. However, the evidence for discreteness based on physical, physiological, or ecological factors was unconvincing, and the available evidence based on behavioral factors was inconclusive. One of those behavioral considerations was the lack of any documentation of foraging behaviors outside what has been documented as normal harbor seal behavior. Regarding significance, we acknowledged that the year-round persistence of a discrete population of harbor seals in a freshwater lake is unusual for the subspecies, but we noted an absence of evidence suggesting the harbor seals in Iliamna

Lake have adaptations to their environment that would benefit the taxon to which they belong. Thus, NMFS concluded that the harbor seals in Iliamna Lake were not significant in relation to the remainder of the species to which they belong and, therefore, listing the harbor seals in Iliamna Lake was not warranted because they did not constitute a species, subspecies, or DPS under the ESA (81 FR 81074; November 17, 2016).

As in its 2012 petition, CBD maintains in its 2020 petition that the harbor seals found in Iliamna Lake constitute a DPS and refers to them in the petition as “Iliamna Lake seals.” CBD asserts that the seals in Iliamna Lake face the following threats: (1) habitat modification and disturbance associated with the Pebble Project (a proposed copper-gold-molybdenum porphyry mine located north of Iliamna Lake) and climate change; (2) disease and natural predation; (3) inadequacy of existing regulatory mechanisms for addressing climate change or the Pebble Project; and (4) other natural and anthropogenic factors including risks of rarity, fishing and hunting, illegal feeding and harassment, oil and gas exploration and development, and contaminants. CBD concludes that the combination of being a small, isolated population with the identified threats qualifies the seals in Iliamna Lake for listing as a threatened or endangered species under the ESA.

ESA Statutory, Regulatory, and Policy Provisions and Evaluation Framework

Section 4(b)(3)(A) of the ESA of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires, to the maximum extent practicable, that within 90 days of receipt of a petition to list a species as threatened or endangered, the Secretary of Commerce make a finding on whether that petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, and promptly publish such finding in the **Federal Register** (16 U.S.C. 1533(b)(3)(A)). When it is found that substantial scientific or commercial information in a petition indicates the petitioned action may be warranted (a “positive 90-day finding”), we are required to promptly commence a review of the

status of the species concerned during which we will conduct a comprehensive review of the best available scientific and commercial information. In such cases, we conclude the review with a finding as to whether, in fact, the petitioned action is warranted within 12 months of receipt of the petition. Because the finding at the 12-month stage is based on a more thorough review of the available information, as compared to the narrow scope of review at the 90-day stage, a “may be warranted” finding does not prejudice the outcome of the status review.

Under the ESA, a listing determination may address a species, which is defined to also include subspecies and, for any vertebrate species, any DPS that interbreeds when mature (16 U.S.C. 1532(16)). A joint policy issued by the Services clarifies the agencies’ interpretation of the phrase “distinct population segment” for the purposes of listing, delisting, and reclassifying a species under the ESA (61 FR 4722; February 7, 1996). A species, subspecies, or DPS is “endangered” if it is in danger of extinction throughout all or a significant portion of its range, and “threatened” if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range (ESA sections 3(6) and 3(20), respectively, 16 U.S.C. 1532(6) and (20)). Pursuant to the ESA and our implementing regulations, we determine whether species are threatened or endangered based on any one or a combination of the following five section 4(a)(1) factors: (1) the present or threatened destruction, modification, or curtailment of habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms to address identified threats; (5) or any other natural or manmade factors affecting the species’ existence (16 U.S.C. 1533(a)(1), 50 CFR 424.11(c)).

ESA-implementing regulations issued jointly by NMFS and USFWS (50 CFR 424.14(h)(1)(i)) define “substantial scientific or commercial information” in the context of reviewing a petition to list, delist, or reclassify a species as credible scientific or

commercial information in support of the petition's claims such that a reasonable person conducting an impartial scientific review would conclude that the action proposed in the petition may be warranted. Conclusions drawn in the petition without the support of credible scientific or commercial information will not be considered "substantial information." In reaching the initial (90-day) finding on the petition, we will consider the information described in sections 50 CFR 424.14(c), (d), and (g) (if applicable).

Our determination as to whether the petition provides substantial scientific or commercial information indicating that the petitioned action may be warranted will depend in part on the degree to which the petition includes the following types of information: (1) current population status and trends and estimates of current population sizes and distributions, both in captivity and the wild, if available; (2) identification of the factors under section 4(a)(1) of the ESA that may affect the species and where these factors are acting upon the species; (3) whether and to what extent any or all of the factors alone or in combination identified in section 4(a)(1) of the ESA may cause the species to be an endangered species or threatened species (*i.e.*, the species is currently in danger of extinction or is likely to become so within the foreseeable future), and, if so, how high in magnitude and how imminent the threats to the species and its habitat are; (4) adequacy of regulatory protections and effectiveness of conservation activities by States as well as other parties, that have been initiated or that are ongoing, that may protect the species or its habitat; and (5) a complete, balanced representation of the relevant facts, including information that may contradict claims in the petition. *See* 50 CFR 424.14(d).

If the petitioner provides supplemental information before the initial finding is made and states that it is part of the petition, the new information, along with the previously submitted information, is treated as a new petition that supersedes the original

petition, and the statutory timeframes will begin when such supplemental information is received. *See* 50 CFR 424.14(g).

We may also consider information readily available at the time the determination is made. We are not required to consider any supporting materials cited by the petitioner if the petitioner does not provide electronic or hard copies, to the extent permitted by U.S. copyright law, or appropriate excerpts or quotations from those materials (*e.g.*, publications, maps, reports, letters from authorities). *See* 50 CFR 424.14(c)(6).

The “substantial scientific or commercial information” standard must be applied in light of any prior reviews or findings we have made on the listing status of the species that is the subject of the petition. Where we have already conducted a finding on, or review of, the listing status of that species (whether in response to a petition or on our own initiative), we will evaluate any petition received thereafter seeking to list, delist, or reclassify that species to determine whether a reasonable person conducting an impartial scientific review would conclude that the action proposed in the petition may be warranted despite the previous review or finding. Where the prior review resulted in a final agency action—such as a final listing determination, 90-day not-substantial finding, or 12-month not-warranted finding—a petition will generally not be considered to present substantial scientific and commercial information indicating that the petitioned action may be warranted unless the petition provides new information or analysis not previously considered. *See* 50 CFR 424.14(h)(1)(iii).

At the 90-day finding stage, we do not conduct additional research, and we do not solicit information from parties outside the agency to help us in evaluating the petition. We will accept the petitioners’ sources and characterizations of the information presented if they appear to be based on accepted scientific principles, unless we have specific information in our files that indicates the petition’s information is incorrect, unreliable, obsolete, or otherwise irrelevant to the requested action. Information that is susceptible to

more than one interpretation or that is contradicted by other available information will not be dismissed at the 90-day finding stage, so long as it is reliable and a reasonable person conducting an impartial scientific review would conclude it supports the petitioners' assertions. In other words, conclusive information indicating the species may meet the ESA's requirements for listing is not required to make a positive 90-day finding. We will not conclude that a lack of specific information alone necessitates a negative 90-day finding if a reasonable person conducting an impartial scientific review would conclude that the unknown information itself suggests the species may be at risk of extinction presently or within the foreseeable future.

To make a 90-day finding on a petition to list a species, we first evaluate whether the petition presents substantial scientific or commercial information indicating the subject of the petition may constitute a "species" eligible for listing under the ESA. If so, we evaluate whether the information indicates that the species may face an extinction risk such that listing, delisting, or reclassification may be warranted; this may be indicated in information expressly discussing the species' status and trends, or in information describing impacts and threats to the species. We evaluate whether the petition presents any information on specific demographic factors pertinent to evaluating extinction risk for the species (*e.g.*, population abundance and trends, productivity, spatial structure, age structure, sex ratio, diversity, current and historical range, habitat integrity or fragmentation), and the potential contribution of identified demographic risks to extinction risk for the species. We then evaluate whether the petition presents information suggesting potential links between these demographic risks and the causative impacts and threats identified in section 4(a)(1) of the ESA.

Information presented on impacts or threats should be specific to the species and should reasonably suggest that one or more of these factors may be operative threats that act or have acted on the species to the point that it may warrant protection under the ESA.

Broad statements about generalized threats to the species, or identification of factors that could negatively impact a species, do not constitute substantial information indicating that listing may be warranted. We look for information indicating that not only is the particular species exposed to a factor, but that the species may be responding in a negative fashion; then we assess the potential significance of that negative response.

Many petitions identify risk classifications made by nongovernmental organizations, such as the International Union on the Conservation of Nature (IUCN), the American Fisheries Society, or NatureServe, as evidence of extinction risk for a species. Risk classifications by other organizations or made under other Federal or state statutes may be informative, but such classification alone may not provide the rationale for a positive 90-day finding under the ESA. For example, as explained by NatureServe, their assessments of a species' conservation status do “not constitute a recommendation by NatureServe for listing under the U.S. Endangered Species Act” because NatureServe assessments “have different criteria, evidence requirements, purposes and taxonomic coverage than government lists of endangered and threatened species, and therefore these two types of lists should not be expected to coincide”

(<https://explorer.natureserve.org/AboutTheData/DataTypes/ConservationStatusCategories>). Additionally, species classifications under IUCN and the ESA are not equivalent; data standards, criteria used to evaluate species, and treatment of uncertainty are also not necessarily the same. Thus, when a petition cites such classifications, we will evaluate the source of information that the classification is based upon in light of the standards on extinction risk and impacts or threats discussed above.

Analysis of Petition

We have reviewed the petition, the literature cited in the petition, and other literature and information readily available in our files. In addition to reiterating information used to support the 2012 petition, the petitioners assert that a recent paper by

Brennan *et al.* (2019) supports the conclusion that the harbor seals in Iliamna Lake are a discrete population and provides evidence of their significance to the broader taxon (the Pacific harbor seal subspecies; *Phoca vitulina richardii*), demonstrating eligibility of this group of seals for designation as a DPS. As discussed above, we evaluate any petition seeking to list a species in light of any prior reviews or findings we have already made on the species that is the subject of the petition. Because our previous review resulted in a final agency action finding the harbor seals in Iliamna Lake did not constitute a species, subspecies, or DPS under the ESA, the petitioned action will generally not be considered to present substantial scientific or commercial information indicating that the action may be warranted unless the petition provides new information or a new analysis not previously considered. *See* 50 CFR 424.14(h)(1)(iii). Therefore, unless the petition provides credible new information, or identifies errors or provides a credible new analysis, we may find that the petition does not present substantial information indicating that the petitioned action may be warranted. Below, we address the main points made by the petitioners, including the purportedly new information based on Brennan *et al.* (2019), and identify where this information was considered in NMFS's 2016 DPS assessment and petition finding.

According to the petitioners, Brennan *et al.* (2019) provides additional support to the DPS discreteness criterion by demonstrating that the seals are lifelong residents of the lake and rely mostly on lake-produced resources, even when spawning salmon are available (CBD 2020, p.19). In our 2016 DPS assessment and petition finding, NMFS considered genetic analyses by Burns *et al.* (2013) indicating that the harbor seals in Iliamna Lake are a small, isolated population: "Together, the mtDNA and nDNA results are consistent with a small, isolated population in Iliamna Lake. The substantial differentiation in allele frequencies between the lake and EBB [Eastern Bristol Bay] seals is consistent with isolation, *i.e.*, lack of breeding dispersal into the lake" (Boveng *et al.*,

2016, p. 24). This information led to our conclusion that based on the best available genetic information, the seals in Iliamna Lake meet the DPS discreteness criterion by being markedly separated from harbor seals in Bristol Bay (*i.e.*, are born and live in the lake) and, by extension, the remainder of the taxon (81 FR 81082, November 17, 2016). The conclusion of Brennan *et al.* (2019) that the seals are lifelong residents in the lake is therefore not new information. In reference to the petitioner's conclusion that the seals in the lake rely mostly on lake-produced resources, even when spawning salmon are available (CBD 2020, p.19), the 2016 DPS assessment (Boveng *et al.* 2016, p. 12 – 15) and the petition finding (81 FR 81080, November 17, 2016) both considered data from scat samples (Hauser *et al.* 2008), and stomach contents and stable isotope analysis (Burns *et al.* 2013) that demonstrated the seals' simultaneous utilization of both freshwater and salmonid species. Additionally, the teeth of harbor seals in Iliamna Lake that were used for Brennan *et al.* (2019) isotope analyses were from a subset of the same seals included in the genetic analyses by Burns *et al.* (2013), which we considered when we concluded in our 2016 DPS assessment and finding that the seals in the lake are a discrete population (Boveng *et al.* 2016, p. 24; 81 FR 81082, November 17, 2016). Therefore, we conclude that the petition does not present new information on the isolated nature of the harbor seals in Iliamna Lake and the discreteness of the population.

With respect to the DPS significance criterion, the petitioners assert that the harbor seals in Iliamna Lake are significant to the broader Pacific harbor seal taxon because of local adaptations resulting from their persistence in a unique ecological setting, including phenotypic (*e.g.*, larger size, darker coloration, and finer pelage) and behavioral adaptations (*e.g.*, use of under-ice spaces), and the development of a “unique foraging ecology” (CBD 2020, p. 18-19).

NMFS considered the evidence for phenotypic adaptations in both the 2016 DPS assessment and petition finding. With respect to the larger size described by CBD,

Boveng *et al.* (2016, p. 38) considered that: “In some species, variation in body size may indicate true adaptation to various ecological settings...” and ultimately concluded that for the harbor seals in Iliamna Lake: “...higher growth rates and/or larger average size could simply reflect greater availability of energy and nutrients, lower disease or parasite burdens, or other factors that would not confer any particular biological significance to the lake population.” For the observation that pelage color and texture differed from marine seals, Boveng *et al.* (2016, p. 38-39) considered local and traditional knowledge and observations from other freshwater seals and concluded: “...we were unable to identify any evidence that this is a result of anything other than an effect of fresh vs. salt water on seal coats; we found no evidence that this represents a heritable trait or adaptation that would convey significance.” The 2016 petition finding came to similar conclusions on all of the proposed phenotypic adaptations, indicating that the variances observed in taste, body size, and pelage traits of harbor seals in Iliamna Lake are likely the result of seasonal diet, individual variation, and normal phenotypic plasticity rather than the result of physiological distinctions from harbor seals in nearby marine environments (81 FR 81079, November 17, 2016). No new information is presented in the current petition that offers additional support for the existence of phenotypic adaptations attributable to the seals residing in Iliamna Lake.

The petition asserts that the harbor seals in Iliamna Lake display novel use of under-ice spaces that contributes to the population’s persistence and survival and is therefore an adaptation that may be of importance to the taxon as a whole (CBD 2020, p. 18). In the 2016 DPS assessment, Boveng *et al.* (2016, p. 39) observed that it “is not clear whether this behavior represents a true adaptation or is simply a response to conditions that would be exploited by other harbor seals if they encountered those same conditions” and that “[a] seal introduced to the lake from the marine population might well survive by learning the requisite behaviors from conspecifics in the lake population.” Based on the

available information, they ultimately concluded: “Although the way that harbor seals in Iliamna Lake cope with the extensive ice cover in winter is unusual for the species, they do not seem to have adopted breeding, whelping, or pup rearing behaviors that would be unusual for the species” (Boveng *et al.* 2016, p. 39). Thus, the information presented on this behavioral adaptation in the current petition is not new.

The petitioners also discuss what they assert is new information about a “unique foraging ecology” among harbor seals in Iliamna Lake. As stated by CBD (2020, p. 1; adapted from Brennan *et al.* 2019): “...the foraging ecology of Iliamna Lake seals differs in several respects from other eastern North Pacific harbor seal populations. Iliamna Lake seals rely heavily on freshwater fish throughout the year, even during periods of abundant sockeye salmon. The seals also undergo a developmental shift whereby their use of salmon increases as they mature.” Brennan *et al.* (2019) further states that Iliamna seals “rely on lake resources and consistently display an ontogenetic shift from a diet composed principally of lake resources to one that exploits seasonally abundant salmon. Both imply locally adapted abilities to exploit a food web unlike that of any other *P. v. richardii* population across the Eastern Pacific.”

The components of the “unique foraging ecology” scenario described by the petitioner, in which the harbor seals in Iliamna Lake rely heavily on freshwater prey even in the presence of seasonally available resources and shift later in life to greater reliance on exogenous (marine-produced) food in the form of returning sockeye salmon spawners, were considered in the 2016 DPS assessment and petition finding. Results of diet studies from both Iliamna Lake and marine harbor seals were considered in our 2016 petition finding, leading to the conclusion that the seals in the lake opportunistically feed on both freshwater and marine prey, a pattern that is consistent with harbor seals foraging on a diversity of fish and invertebrate prey across their range (81 FR 81080, November 17, 2016). The finding additionally considered information from a study by Burns *et al.*

(2013) that provided further support that the harbor seals in Iliamna Lake consume freshwater species (*e.g.*, threespine stickleback and Arctic grayling or lake whitefish) when salmonids are present and that the variety and types of prey items in the stomachs of the seals sampled further reflects the generally opportunistic feeding habitats of harbor seals and does not suggest use of unusual or unique prey based on their lake habitat (81 FR 81083, November 17, 2016).

Information addressing the second component of the “unique foraging ecology,” the increased reliance on seasonal salmon, was considered by the BRT in the 2016 DPS assessment: “The finding that harbor seals in Iliamna Lake predominantly fed on adult salmon during the summer period of high sockeye abundance corroborates previous studies (Brown and Mate 1983, Payne and Selzer 1989, Olesiuk 1993, Iverson *et al.* 1997) showing that harbor seal populations feed on seasonally abundant prey wherever they occur (Hauser *et al.* 2008)” (Boveng *et al.* 2016, p. 21-22). The November 17, 2016 petition finding also noted that the seals in Iliamna Lake had similar seasonal concentrations of salmon in their diets as harbor seals from other freshwater systems (81 FR 81080).

The petitioner’s characterization of a “unique foraging ecology” for harbor seals in Iliamna Lake does not constitute new information because NMFS previously considered these same foraging behaviors in the 2016 DPS assessment and petition finding, concluding that the foraging behaviors of these seals are consistent with the natural history of harbor seals, particularly the Pacific subspecies *Phoca vitulina richardii*, that is widely understood by harbor seal experts and well documented in the literature. The petition describes an age-related shift in diet, referred to as an ontogenetic shift, which is a widespread behavior among predator species that grow as they develop and are able to utilize resources differently as they increase in size (*e.g.*, Werner and Gilliam 1984). Harbor seals in general are known to exhibit size-related prey selection, exploiting small,

easy-to-catch prey until they attain the size and proficiency needed to catch and consume larger prey, such as adult salmonids. Therefore, the age-related shift in diet described by the petitioners for the harbor seals in Iliamna Lake (based on Brennan *et al.* 2019) merely highlights well-known behavior and, as a result, would not lead a reasonable person conducting an impartial scientific review to conclude that this population might be significant in relation to the broader taxon such that the action proposed in the petition may be warranted despite NMFS's 2016 DPS assessment and petition finding.

The petitioners further assert that in addition to being a local adaptation, the “unique foraging ecology” also has evolutionary significance for the broader taxon: “The Iliamna Lake seal’s unique foraging ecology has significance for the evolutionary potential of the broader *P. v. richardii* taxon in a time of rapid change and increasing threats” (CBD 2020, p.20; based on Brennan *et al.* 2019). In the 2016 DPS assessment, the Biological Review Team (BRT) evaluated if there was evidence that persistence in an unusual setting had resulted in adaptations (*e.g.*, genetic or behavioral) in the harbor seals in Iliamna Lake that may be of significance to the broader taxon. “Although there were genetic differences...those were more indicative of reduced genetic diversity in the lake population, rather than development of novel genes in response to the unusual habitat, and the genetic sampling remains rather inadequate for judging this” (Boveng *et al.* 2016, p. iv). In the 2016 petition finding, NMFS concluded there was no evidence suggesting the harbor seals in Iliamna Lake had specific adaptations to their environment that would be beneficial to the taxon, and thus the persistence of the population in the lake is not significant to the subspecies *P. v. richardii*: (81 FR 81084, November 17, 2016). As discussed above, the petition does not provide any new genetic sampling or any other new information not previously considered to support the assertion that seals in Iliamna Lake have a “unique foraging ecology.” The petition therefore presents no new evidence of adaptations in the harbor seals in Iliamna Lake that may support a finding that they are

evolutionarily significant to the broader taxon, per the significance criterion of our DPS policy (61 FR 4722, February 7, 1996).

In reference to the other significance criteria, the petition asserts that the harbor seals in Iliamna Lake are significant to the greater taxon because the loss of the Iliamna Lake population would result in a significant gap in the range of the taxon, and the genetic characteristics of the population differ markedly from marine harbor seals (CBD 2020, p. 21-22). The 2016 DPS assessment and the petition finding discussed that the taxon is broadly distributed, ranging from Alaska to the Baja Peninsula, and that the estimated number of seals in Iliamna Lake accounts for roughly 0.1 percent of the total population (Boveng *et al.* 2016, p. 40; 81 FR 81084-85, November 17, 2016).

Additionally, Boveng *et al.* (2016, p.40) stated: “Because Iliamna Lake is not a part of the continuous coastal range of the marine population of harbor seals, the loss of the Iliamna Lake segment could not produce a gap in that range, and therefore would not reduce or preclude dispersal between segments of the marine population.”

With regard to the genetic characteristics of the population differing from marine harbor seals, the petitioners state that the harbor seals in Iliamna Lake have been there long enough for genetic novelty to arise and that the difference in behavior, morphology, ecology, and habitat between the seals in the lake and marine harbor seals provides evidence of genetic novelty (CBD 2020, 22-23). Taking the genetic evidence previously discussed into account, Boveng *et al.* (2016, p. 43) stated: “...it cannot be concluded with any confidence that this population has been isolated in the lake long enough for there to be a high likelihood of mutations at other genetic loci that could be selective and have adaptive function but not be outwardly apparent in the morphology or behavior of the seals. On the contrary, the evidence available thus far suggests that genetic diversity has been lost rather than gained since isolation of this population.” The petition finding came to a similar conclusion that the genetic characteristics (*i.e.*, mtDNA haplotype) of the

seals in Iliamna Lake are not markedly different from those found in Bristol Bay and therefore are not significant to the taxon as a whole (81 FR 81085, November 17, 2016). Overall, the petition does not provide any new information regarding the significance criterion that would lead a reasonable person conducting an impartial scientific review to conclude that the petitioned action may be warranted despite NMFS's the 2016 DPS assessment and petition finding.

Petition Finding

We thoroughly reviewed the information presented in the petition and found that it does not provide any new information that was not already considered in our 2016 DPS assessment and petition finding that the harbor seals in Iliamna Lake do not meet the criteria of a DPS, and therefore do not constitute an entity eligible for listing under the ESA. As such, we find that the petition does not present substantial scientific or commercial information indicating that the petitioned action may be warranted.

References Cited

A complete list of all references is available upon request from the Protected Resources Division of the NMFS Alaska Regional Office in Juneau, Alaska (see **ADDRESSES**).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: June 24, 2021.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.